Proceedings of the Government of His Highness the Maharaja of Mysore.

READ—

(1) Letter No. 283, dated the 11th September 1905, from the District Magistrate of Hassan, to the Secretary to the Government of His Highness the Maharaja of Mysore, General and Revenue Department:—

"1. I have the honor to state that on the night of the 3rd April 1905, Mr. A. R. Park of Batchanhalla estate, President of the Mysore Game and Fish Preservation Association in Manjarabad Taluk of this district, furnished information to the Hanbal Police Station that some persons were illegally fishing at the junction of the Waddanhalla stream near Handigoanahalli estate of the same taluk. Constable Dasi of the Hanbal Police Station at once proceeded to the spot and seized a creel, a woman's cloth and some fish and brought the same to the Police Station along with the accused persons, Krishne Gowda and four others. On the following day Police dafadar Shek Davood, who had by that time returned to the Police Station, went to the Waddanhalla stream, saw that two dams had been constructed across in the stream in the water of which he found some powdered root of "*Arakalberu*" presumed to be a poisonous substance which he secured and drew up a Mahazar regarding these particulars. The said dafadar after completing the investigation of the case lodged a formal complaint against the abovenamed accused persons before the Amildar and 2nd Class Magistrate of Manjarabad Taluk, charging them for contravention of Rule 4 of the Rules framed under the Mysore Game and Fish Preservation Regulation, II of 1901, being an offence punishable under Section 8 of the said Regulation.

2. The Amildar-Magistrate after examining the witnesses for the prosecution and after record of the statements of the accused 1 to 4, acquitted all of them under Section 245, Criminal Procedure Code, being of opinion that the acts of the accused did not constitute any contravention of the Rules framed under the Regulation.

3. It is apparent from the statements of the accused persons 1 to 3 that they admitted that on the night of the 3rd April 1905 they went to the Waddanhalla stream for the purpose of fishing, that the woman's cloth and the creel found in the river and seized by the Police belonged to the 3rd accused Subbegowda, that they had tied the woman's cloth across the stream and had fixed the creel in the river and that there were some ten or twelve fish in the creel. In the face of the prosecution evidence and such admissions of the accused 1 to 3, the Amildar-Magistrate concluded (1) that the action of the accused did not constitute any offence since the stream flowed from west to east joining the Hemavati River which ultimately joins the river Cauvery, (2) that the offence was not committed during the "close season;" (3) that fishing was not prohibited in the said Waddanhalla stream; and (4) that the flaked root called "Arakalberu" was not proved by any evidence of the prosecution to be a poisonous substance or that it was put into the water of the halla by the accused persons.

4. I may here point out that the basis of the prosecution was not that the accused persons were fishing during "close season" but that they were fishing by prohibited or illegal means. Hence the Amildar-Magistrate's findings on the 1st, 2nd and 3rd points were quite irrelevant to the case.

5. Although the Amildar-Magistrate held that the flakes of the root called "Arakalberu" were not proved by the prosecution to be poisonous substance to constitute a contravention of Rule 4, still he entirely overlooked the provision contained in the same Rule 4 framed under the Regulation, forbidding the capture or destruction of fish in any stream by "the setting of fixed engines," in which expression the construction of dams across the stream, tying of the woman's cloth across the stream, and fixing the creel against it so as to present its mouth to the current of the stream and thus to catch fish in it, must be presumed to be included. If so, whether such means of fishing be employed during "close season" or not, is quite immaterial and would equally amount to a contravention of Rule 4 punishable under Section 8 of the Regulation. The prosecution evidence and the admissions of the accused 1 to 3 clearly proved such contravention against them and the purport of the Police dafadar's written complaint presented to the Magistrate and his sworn statement thereon clearly included such contravention of Rule 4 which was particularly quoted by him in the written complaint.

6. From the foregoing it is apparent that the Amildar-Magistrate's finding that the accused persons had not committed any contravention of Rule 4 punishable under Section 8 of the Regulation, resulting in his order of acquittal of the accused persons under Section 245, Criminal Procedure Code, and return of the creel and the cloth to the 3rd accused, was illegal and arose out of a mistake or evasion of law.

7. Accordingly I made a reference to the Chief Court on the above facts under provision of Section 439, Criminal Procedure Code, submitting the entire records of the Case No. 98 of 1904-05 on the file of the Amildar and 2nd Class Magistrate of Manjarabad Taluk for orders, whereupon the Chief Judge in Criminal Revision Case No. 10 of 1905-06 on the file of the Chief Court of Mysore, passed the following order:—"The attention of the District Magistrate is drawn to the provisions of Sections 439 (5) and 417, Criminal Procedure Code. The remedy sought should be by way of appeal by Government, not by way of review."

8. I may point out that owing to the forested and very intersected nature of the malnad tracts of Manjarabad Taluk and as the villages in those parts are few and far between, the chances of detection of such illegal fishing by the villagers are very few, as the difficulty

of watching such extensive areas of intersected and unfrequented country is very great. And when a *prima facie* case had been made out against the accused persons both by the evidence of the prosecution witnesses and the admissions of the accused persons themselves, the effect of an acquittal of the accused persons by the Magistrate is calculated not only to embolden them to recklessly commit similar offences in future and thus defy the authority of law itself, but also to have no deterrent effect against other persons similarly disposed to commit such offences.

9. Hence it appears obvious to me that there has been a clear miscarriage of justice by an improper acquittal in this case which is one of sufficient importance calculated to affect subsequent prosecution in cases of this nature, as may be seen from a copy of the letter of the Honorary Secretary of the Mysore Game and Fish Preservation Association herewith forwarded.

10. In accordance with instructions conveyed in Government Proceedings No. J. 3354-63—C. 162-2, dated 22nd May 1905, calling attention to para 2 of the previous Government Proceedings No. Camp 2391-40, dated the 25th January 1888, I made a reference to the Government Advocate at Bangalore to favor me with his opinion as to the fitness of moving Government to sanction an appeal against the order of acquittal being preferred in this case to the Chief Court of Mysore under provision of Section 417, Criminal Procedure Code.

11. I herein enclose a copy of letter No. 46, dated 9th September 1905, this day received in reply from the Government Advocate, from which it may be seen that he is of opinion that the case is a fit one for appeal.

12. I therefore request that you will be so good as to obtain sanction of Government to instruct the Government Advocate to prefer an appeal to the Chief Court of Mysore under provision of Section 417, Criminal Procedure Code, against the order of acquittal of the accused persons under Section 245, Criminal Procedure Code, passed by the Amildar and 2nd Class Magistrate of Manjarabad Taluk.

13. The entire records of Criminal Case No. 98 of 1904-05 on the file of the Amildar and 2nd Class Magistrate of Manjarabad Taluk, together with a certified copy of his judgment, dated 31st May 1905, referred to in the concluding paragraph of the Government Advocate's letter No. 46, dated the 9th instant, are also herewith submitted for favor of forwardal to the Government Advocate, should Government accord sanction to preferring the appeal to the Chief Court of Mysore."

(2) Government Proceedings No. J. 988-9—C. 91-2, dated the 30th September 1905, instructing the Government Advocate to prefer an appeal to the Chief Court against the order of acquittal of the accused persons, passed by the Amildar-Magistrate of the Manjarabad Taluk in the said case.

(3) Correspondence ending with letter No. 120, dated the 12th December 1905, from the Government Advocate in Mysore, stating that the Chief Court in Criminal Appeal No. 90 of 1905-06, set aside the order of acquittal of three of the four accused persons and sentenced them to pay a fine of Rs. 2 each.

(4) The Judgment passed by the Chief Court in the above appeal :—

Thursday, the 23rd day of November 1905.

PRESENT.

Mr. Justice A. Rangasami Iyengar, Judge, and
Mr. Justice H. V. Nanjundayya, Judge.

Criminal Appeal No. 90 of 1905-06.

Appellant	*Vs.*	Respondents (accused 1, 2 and 3)
The Government of Mysore by Mr. S. Narayana Rao, Government Advocate.		1. Krishne Gowda. 2. Vasanta. 3. Subbe Gowda.

Appeal against the order of acquittal passed by the Amildar-Magistrate of Manjarabad Taluk in Criminal Case No. 98 of 1904-05.

This appeal coming on for hearing on Wednesday the 22nd day of November 1905, the Court pronounced the following—

Order.

* There is no proof that the accused placed the powder of the plant in water or that it is poisonous or otherwise deleterious. But the accused admit having fixed a basket for catching fish against the stream and lain watching near the place throughout the night. This comes under the prohibition against the setting of fixed engines for the capture or destruction of fish contained in Rule 4 (Notification 9007—Legis. 56, dated the 11th December 1901). We find the three accused persons, Krishne Gowda, Vasantha and Subbe Gowda, guilty under this provision and sentence them each to a fine of Rs. 2 under Section 8 of the Game and Fish Preservation Regulation.

No. J. 1882-91—*Cts.* 91-05-7, *dated Bangalore, 9th January* 1906.

ORDER THEREON.—Circulated among the Deputy Commissioners with a request that early and wide publicity be given to the judgment by circulars addressed to all patels and by *tom-tom* in the villages, as there is ground to believe that the mode of catching fish in the manner referred to in the judgment is practised generally by villagers and professional fishermen.

B. K. VENKATA VARADA IYENGAR,
Secy. to Govt., Gen. & Rev. Dept.